



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

June 10, 2014

Mr. Conrad Franz  
290 Broadway, 23<sup>rd</sup> Floor  
New York, New York 10007

RE: Freedom of Information Act (FOIA) Request EPA-R2-2014-6355

Dear Mr. Franz:

This is in response to your FOIA request submitted to the EPA Washington, DC office on May 9, 2014, and later transferred to Region 2 for action. Please note appropriate office records were searched and staffers contacted for their input. Enclosed you will find records produced in response to this request.

Information requested pertaining to timecard (including overtime) and leave information for specified employees during the specified time period is exempt from mandatory disclosure pursuant to Exemption 6 of the FOIA, 5 U.S.C. §552(b)(6), which requires withholding where disclosure would constitute a clearly unwarranted invasion of personal privacy. The information sought is clearly is personal in nature. See *Quinn v. Stone*, 978 F.2d 126, 132-133 (3<sup>rd</sup> Cir. 1992). Exemption 6 requires a balancing of the privacy interest versus the public interest in disclosure. To determine whether the exemption applies, courts balance the public interest in disclosure against the privacy interest protected by the exemption. The "public interest" is defined as to the extent to which the information sought would shed light on agency activities. *Bibles v. Oregon Natural Desert Ass'n*, 519 U.S. 355 (1997). Even a weak privacy interest will outweigh a nonexistent public interest. "In the absence of any public interest in disclosure, any countervailing interest in privacy defeats a FOIA request." *Graff v. FBI*, 822 F.2d 23, 34 (D.D.C. 2011). Consequently, the Agency concludes that the requested information would shed no light on EPA activity and, for that reason, is exempt from disclosure as indicated above.

We are unable to retrieve phone call listings, therefore, these types of records do not exist.

Unflattering comments made by staff members or by outside parties that call into question the performance and/or integrity of identified Agency staff members is exempt from mandatory disclosure pursuant to Exemption 6 of the FOIA. Documents containing unfavorable details of, or allegations about, an employee's job performance (whether or not these have any basis in fact) implicate a substantial privacy interest. *Warren v. Social Security Administration*, 2000 U.S. Dist. LEXIS 12385, at \*10 (W.D.N.Y. August 22, 2000). Upon balancing the more-than-de minimis personal privacy here interest against the public interest in disclosure requires consideration of several factors. These include the employees' rank, the degree of wrongdoing and strength of evidence, whether the information sought sheds light on a government activity, and whether the information sought is related to job function or is of a more personal nature. *Tomscha v. GSA*, 2005 U.S. App. LEXIS 27385, at \*5-6 (2d. Cir. December 12, 2005).

The Agency concludes that much of the redacted material may be fairly characterized as *ad hominem* personal attacks on how identified employees conducted their official duties. Other segments of exempt responsive material concern personnel matters of no public interest. Consequently, and with reference to the factors cited immediately above, the Agency concludes that the privacy interest of the employees concerned (who are not high-ranking Regional officials) outweighs any public interest that disclosure of such verbiage might serve.

Please consider this our final determination. You may submit your appeal via FOIAONLINE at <https://foiaonline.regulations.gov/foia/action/public/hometo> or to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566- 2147, E-mail: [FOIA\\_HQ@epa.gov](mailto:FOIA_HQ@epa.gov); Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the case file number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in cursive script that reads "Mary Mears".

Mary Mears  
Chief, Public Outreach Branch  
Deputy Director, Public Affairs Division  
EPA Region 2